

AMENDED IN SENATE MAY 8, 2012
AMENDED IN SENATE APRIL 18, 2012

SENATE BILL

No. 1336

Introduced by Senator Yee

February 24, 2012

An act to repeal and add Section 89574 of the Education Code, and to amend Sections 8547.7 and 53087.6 of the Government Code, relating to investigations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1336, as amended, Yee. Improper governmental activities: investigations: confidentiality.

(1) The California Whistleblower Protection Act establishes procedures under which a state employee may report improper governmental activities or make a protected disclosure to the State Auditor and prohibits retaliation or reprisal against a state employee for these acts. The act requires the State Auditor to investigate and report on improper governmental activities, as defined. The act requires the State Auditor to keep confidential every investigation, except that the State Auditor may release any findings or evidence supporting any findings resulting from an investigation and issue a public report of an investigation that has substantiated an improper governmental activity. The act requires the report to keep confidential the identity of the employee or employees involved.

This bill would instead require the State Auditor to release any findings resulting from an investigation conducted pursuant to this act that ~~has~~ *have* been substantiated ~~and to release~~, information regarding any action taken by any agency or authority to which the results of the investigation have been reported, *and any reports on corrective action*

from the involved agency, as specified. The bill would require the name and title of the person found responsible for improper governmental activity and any discipline imposed by the involved agency or other authority, as specified, to be disclosed.

(2) Existing law authorizes a city, county, or city and county auditor or controller to maintain a whistleblower hotline to receive calls from persons who have information regarding fraud, waste, or abuse by local government employees. Existing law requires any investigation conducted pursuant to this authorization to be kept confidential, except to issue any report of an investigation that has been substantiated or release any findings resulting from a completed investigation, as specified.

This bill would instead require any investigative audit to be kept confidential, except to release any findings resulting from an investigative audit conducted pursuant to this authorization that ~~has~~ *have* been substantiated and ~~to release information regarding any action taken by any agency to which the results of the audit have been reported~~ *any corrective actions recommended to prevent the continuation or recurrence of the activity, as specified. The bill would require the name and title of the person found responsible for improper governmental activity, any discipline or any other penalty imposed by the employer agency or other authority, and any corrective action taken to prevent the continuation or recurrence of the activity, as specified, to be disclosed.*

(3) The California State University Investigation of Reported Improper Governmental Activities Act establishes a procedure for the investigation of written complaints submitted to a designated administrator of the California State University by employees of, or applicants for employment at, the university. The act requires every investigative audit conducted pursuant to it to be kept confidential, except that the California State University may release any findings resulting from the investigation, as specified, and issue a report of an investigation that has substantiated an allegation made by the complainant. The act requires the report to keep confidential the identity of the individual or individuals involved.

This bill would instead require the California State University to release any findings resulting from an investigative audit conducted pursuant to this act that ~~has~~ *have* been substantiated and ~~to release any action taken by the university or any other agency to which the results of the investigative audit have been reported~~ *any corrective actions*

recommended, as specified. The bill would require the name and title of the person found responsible for improper governmental activity and any discipline imposed by the university or other agency, as specified, to be disclosed.

(4) The California Constitution requires that a statute, court rule, or other authority adopted after November 4, 2004, that limits the public's right of access be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

The bill would, with respect to this constitutional provision, express findings and declarations of the Legislature regarding the individual privacy interests that are protected under the bill.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:
3 (a) This bill imposes a limitation on the public's right of access
4 to the writings of public officials and public agencies within the
5 meaning of Section 3 of Article 1 of the California Constitution.
6 Pursuant to paragraph (2) of subdivision (b) of Section 3 of Article
7 1 of the California Constitution, the Legislature makes the findings
8 set forth in this section in order to demonstrate the privacy interest
9 protected by this limitation and the need for protecting that privacy
10 interest.
11 (b) Investigations of improper governmental activities, and the
12 steps taken to correct those improper activities upon due
13 investigation, rely crucially on privacy protections for the original
14 complainant, whether or not reporting through organized
15 whistleblower programs, for the witnesses interviewed in the course
16 of the investigation, and for the persons cleared of any suspicion
17 of wrongdoing as a consequence of the investigation. Without
18 these protections, knowledgeable and conscientious persons aware
19 of improper activities will be far less likely to come forward with
20 complaints, essential witnesses will be far less likely to cooperate
21 in the investigation, and innocent public servants will be unjustly
22 injured by the disclosure of having been the subject of an
23 investigation of alleged wrongdoing. Improper governmental
24 activities will persist, unreported, uninvestigated, and uncorrected.

(c) In order to protect the identities and other privacy interests of whistleblowers, witnesses, and innocent public servants while keeping the public aware of what complaints have been received, what resulting investigations have determined, which, if any, persons have been found responsible for improper activities, what, if any, discipline has been imposed, and what, if any, steps are being or have been taken to prevent recurrence of the improprieties, the confidentiality provisions of this bill are determined to be necessary.

SEC. 2. Section 89574 of the Education Code is repealed.

SEC. 3. Section 89574 is added to the Education Code, to read:

89574. Any investigative audit undertaken under this article shall be kept confidential, except that the California State University shall release findings resulting from an investigative audit conducted pursuant to this article that ~~has~~ *have* been substantiated and information, including the identity of the subject of the audit, regarding any action taken by the state university or other agency to which the results of the investigative audit have been reported and any corrective actions recommended, including, but not limited to, discipline or any other penalty, to prevent the continuation or recurrence of the activity. Upon exhaustion of any administrative appeal of the university employer, the name and title of the person found responsible for improper governmental activity, beyond an isolated, minor incident involving no injury to fellow employees or other persons, as well as any discipline imposed by the university or other agency as a consequence of the improper governmental activity, shall be disclosed. A release of findings or information shall keep confidential the identity of the person providing the information that initiated the investigative audit and the identity of any witness interviewed in the investigation, unless the person or witness provides written permission to have his or her identity publicly disclosed.

SEC. 4. Section 8547.7 of the Government Code is amended to read:

8547.7. (a) If, after investigating an allegation, the State Auditor finds that a state agency or employee may have engaged or participated in an improper governmental activity, he or she shall prepare an investigative report and send a copy of that report to the head of the agency involved and to the head of any other agency that has direct oversight over that involved agency. The

1 investigative report ~~may~~ *shall* include ~~the State Auditor's~~
2 ~~recommended actions~~ *any actions recommended by the State*
3 *Auditor, including, but not limited to, discipline or any other*
4 *penalty, to prevent the continuation or recurrence of the activity.*
5 If appropriate, the State Auditor shall report this information to
6 the Attorney General, the policy committees of the Senate and
7 Assembly having jurisdiction over the subject involved, and to
8 any other authority that the State Auditor determines appropriate.
9 Subject to the limitations of Section 8547.5, the State Auditor may
10 provide to the involved agency any evidence gathered during the
11 investigation that, in the judgment of the State Auditor, is necessary
12 to support any of the recommendations. Within 60 days of
13 receiving the State Auditor's investigative report, the involved
14 agency shall report to the State Auditor any actions that it has taken
15 or that it intends to take to implement the recommendations. The
16 agency shall file subsequent reports on a monthly basis until final
17 action has been taken.

18 (b) The State Auditor shall not have any enforcement power.
19 In any case in which the State Auditor finds that a state agency or
20 employee may have engaged in an improper governmental activity,
21 the State Auditor may provide the finding, and any evidence
22 supporting the finding, subject to the limitations of Section 8547.5,
23 to a criminal law enforcement agency, an administrative law
24 enforcement agency, or a licensing agency that has authority to
25 investigate the matter.

26 (c) Every investigation shall be kept confidential, except that
27 the State Auditor shall release findings resulting from an
28 investigation conducted pursuant to this article that ~~has~~ *have* been
29 substantiated ~~and, information, including the identity of the subject~~
30 ~~of the audit,~~ regarding any action taken by any agency or authority
31 to which the results of the investigation have been reported, *and*
32 *any reports on corrective action from the involved agency required*
33 *by subdivision (a). Upon exhaustion of any administrative appeal*
34 *of the agency employer, the name and title of the person found*
35 *responsible for improper governmental activity, beyond an isolated,*
36 *minor incident involving no injury to fellow employees or other*
37 *persons, as well as any discipline imposed by the involved agency*
38 *or other authority as a consequence of the improper governmental*
39 *activity, shall be disclosed.* A release of findings or information
40 shall keep confidential the identity of the person providing the

1 information that initiated the investigation and any witness
2 interviewed in the investigation, unless the person or witness
3 provides written permission to have his or her identity publicly
4 disclosed.

5 (d) This section does not limit any authority conferred upon the
6 Attorney General or any other department or agency of government
7 to investigate any matter.

8 SEC. 5. Section 53087.6 of the Government Code is amended
9 to read:

10 53087.6. (a) (1) A city, county, or city and county auditor or
11 controller who is elected to office may maintain a whistleblower
12 hotline to receive calls from persons who have information
13 regarding fraud, waste, or abuse by local government employees.

14 (2) A city, county, or city and county auditor or controller who
15 is appointed by, or is an employee of, a legislative body or the
16 government agency that is governed by the city, county, or city
17 and county, shall obtain approval of that legislative body or the
18 government agency, as the case may be, prior to establishing the
19 whistleblower hotline.

20 (b) The auditor or controller may refer calls received on the
21 whistleblower hotline to the appropriate government authority for
22 review and possible investigation.

23 (c) During the initial review of a call received pursuant to
24 subdivision (a), the auditor or controller, or other appropriate
25 governmental agency, shall hold in confidence information
26 disclosed through the whistleblower hotline, including the identity
27 of the caller disclosing the information and the parties identified
28 by the caller.

29 (d) A call made to the whistleblower hotline pursuant to
30 subdivision (a), or its referral to an appropriate agency under
31 subdivision (b), may not be the sole basis for a time period under
32 a statute of limitation to commence. This section does not change
33 existing law relating to statutes of limitation.

34 (e) (1) Upon receiving specific information that an employee
35 or local government has engaged in an improper government
36 activity, as defined by paragraph (2) of subdivision (f), a city or
37 county auditor or controller may conduct an investigative audit of
38 the matter. The identity of the person providing the information
39 that initiated the investigative audit shall not be disclosed without
40 the written permission of that person, unless the disclosure is to a

1 law enforcement agency that is conducting a criminal investigation.
2 If the specific information is in regard to improper government
3 activity that occurred under the jurisdiction of another city, county,
4 or city and county, the information shall be forwarded to the
5 appropriate auditor or controller for that city, county, or city and
6 county.

7 (2) Any investigative audit conducted pursuant to this
8 subdivision shall be kept confidential, except the authority
9 conducting the investigative audit shall release findings resulting
10 from an investigative audit conducted pursuant to this subdivision
11 that ~~has~~ *have* been substantiated and ~~information, including the~~
12 ~~identity of the subject of the audit, regarding any action taken by~~
13 ~~any other agency to which the results of the audit have been~~
14 ~~reported~~ *any corrective actions recommended, including, but not*
15 *limited to, discipline or any other penalty, to prevent the*
16 *continuation or recurrence of the activity. Upon exhaustion of any*
17 *administrative appeal of the agency employer, the name and title*
18 *of the person found responsible for improper governmental activity,*
19 *beyond an isolated, minor incident involving no injury to fellow*
20 *employees or other persons, any discipline or any other penalty*
21 *imposed by the employer agency or other authority as a*
22 *consequence of the improper governmental activity, and any*
23 *corrective action taken to prevent the continuation or recurrence*
24 *of the activity, shall be disclosed.* A release of findings or
25 information shall keep confidential the identity of the person
26 providing the information that initiated the investigative audit and
27 the identity of any witness interviewed in the investigation, unless
28 the person or witness provides written permission to have his or
29 her identity publicly disclosed.

30 (3) Notwithstanding paragraph (2), the auditor or controller may
31 provide a copy of a substantiated audit report that includes the
32 identities of the subject employee or employees and other pertinent
33 information concerning the investigation to the appropriate
34 appointing authority for disciplinary purposes. The substantiated
35 audit report and any subsequent investigatory materials or
36 information are subject to the confidentiality provisions of
37 applicable state and federal statutes, rules, and regulations.

38 (f) (1) For purposes of this section, “employee” means any
39 individual employed by any county, city, or city and county,
40 including any charter city or county, and any school district,

1 community college district, municipal or public corporation, or
2 political subdivision that falls under the auditor's or controller's
3 jurisdiction.

4 (2) For purposes of this section, "fraud, waste, or abuse" means
5 any activity by a local agency or employee that is undertaken in
6 the performance of the employee's official duties, including
7 activities deemed to be outside the scope of his or her employment,
8 that is in violation of any local, state, or federal law or regulation
9 relating to corruption, malfeasance, bribery, theft of government
10 property, fraudulent claims, fraud, coercion, conversion, malicious
11 prosecution, misuse of government property, or willful omission
12 to perform duty, is economically wasteful, or involves gross
13 misconduct.